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4 UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
6 OAKLAND DIVISION  
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8 GREGORY R. RAIFMAN and SUSAN  
9 RAIFMAN, husband and wife, individually  
10 and on behalf of their marital community and  
11 as Trustees of the RAIFMAN FAMILY  
REVOCABLE INTERVIVOS TRUST and as  
beneficiaries of the PALLADIAN TRUST;  
GEKKO HOLDINGS, LLC, and HELICON  
INVESTMENTS, LTD.,

12 Plaintiffs,

13 vs.

14 WACHOVIA SECURITIES, LLC, N/K/A  
15 WELLS FARGO ADVISORS, LLC,

16 Defendant.

Case No: C 11-02885 SBA

**ORDER**

17 On June 18, 2012, Defendant filed a motion to dismiss the first amended complaint  
18 under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Dkt. 74. Under Civil Local  
19 Rule 7-3, any opposition or statement of non-opposition to Defendant's motion was due no  
20 later than 14 days after the motion was filed. To date, Plaintiffs have not filed an  
21 opposition or statement of non-opposition to the motion. Nor have Plaintiffs requested an  
22 extension of time to respond to the motion. Instead, Plaintiffs have filed a motion for leave  
23 to file a second amended complaint. Dkt. 103. This Court's Standing Orders specifically  
24 warn that "the failure of the opposing party to file a memorandum of points and authorities  
25 in opposition to any motion shall constitute a consent to the granting of the motion." Civil  
26 Standing Orders at 4. Notwithstanding the requirements of Civil Local Rule 7-3 and the  
27 Court's warning, Plaintiffs have not filed an opposition or statement of non-opposition to  
28 Defendant's motion.

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1 A district court may properly grant a motion for failure to file an opposition. See  
2 Gwaduri v. I.N.S., 362 F.3d 1144, 1146-1147, n. 3 (9th Cir. 2004) (noting that courts have  
3 the authority to grant unopposed motions); Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir.  
4 1995) (the failure to file an opposition to a motion in violation of a local rule is a proper  
5 ground to grant the motion). Here, although Plaintiffs' failure to file an opposition to  
6 Defendant's motion to dismiss is a proper ground to grant the motion, the Court will afford  
7 Plaintiffs another opportunity to file an opposition to the motion.

8 Accordingly,

9 IT IS HEREBY ORDERED THAT:

10 1. Plaintiffs shall file an opposition or statement of non-opposition to  
11 Defendant's motion to dismiss (Dkt. 74) by no later than seven (7) days from the date this  
12 Order is filed. In the event that Plaintiffs file a timely opposition to the motion, Defendant  
13 shall file a reply brief by no later than seven (7) days from the date Plaintiffs' opposition is  
14 filed. Upon the completion of briefing, this matter will be taken under submission without  
15 oral argument. The Court warns Plaintiffs that the failure to timely comply with this Order  
16 will result in dismissal of the first amended complaint.

17 IT IS SO ORDERED.

18 Dated: 1/25/13

  
SAUNDRA BROWN ARMSSTRONG  
United States District Judge